

HOUSE BILL 826

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 2, relative to wage regulation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 2, is amended by adding
Sections 2 through 9 of this act as a new part.

SECTION 2. As used in this part:

- (1) "Commissioner" means the commissioner of the labor and workforce development;
- (2) "Department" means the department of labor and workforce development;
- (3) "Employ" means to suffer or permit to work;
- (4) "Employee" means a person born or naturalized in the United States and subject to the jurisdiction thereof, or a person legally present in this country, either of whom is employed by an employer;
- (5) "Employer" includes an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, not involved in interstate commerce acting directly or indirectly in the interest of an employer in relation to an employee;
- (6) "Tipped employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than thirty dollars (\$30.00) a month in tips; and
- (7) "Wages" means compensation paid to an employee in the form of legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value; provided, wages may include the reasonable cost to

the employer, as determined by the commissioner, of furnishing meals or lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee.

SECTION 4.

(a) Every employer shall pay to each tipped employee wages at a rate not less than the standard federal minimum wage per hour.

(b) To compute the minimum wage of any tipped employee coming within the purview of this part, credit toward the standard federal minimum required wage shall be given for any tips or gratuities, meals or lodging received by the employee.

SECTION 5.

(a) Every employer subject to this part shall keep a summary of this part and any applicable wage orders and regulations posted in a conspicuous and accessible place in or about the premises of the employer's place of business.

(b)

(1) The tipped employee shall be required to provide to the employer on a daily basis an accurate total of the tips received for each day the employee worked as a tipped employee.

(2) In any civil action filed against the employer by the employee pursuant to Section 6, proof by the employer that the employee provided false or inaccurate information on the amount of tips received, may be used by the employer to mitigate or offset any claim or action brought by the employee to recover unpaid wages under this part.

SECTION 6. Any employer who violates the minimum wage requirements of this part shall be liable to the employee or employees affected for the amount of unpaid minimum wages. Upon a judgment being rendered in favor of any employee or employees, in any action brought

in any court of competent jurisdiction to recover unpaid wages under this part, such judgment shall include, in addition to the unpaid wages adjudged to be due, an additional amount equal to such wages as damages. The court shall, in addition to any judgment awarded to the employees, require the defendant to pay court costs and reasonable attorney's fees incurred by the employee or employees. However, action to recover must be instituted within three (3) years from the date such wages should have been paid.

SECTION 7. In the administration of this part, the commissioner shall cooperate, to the fullest extent consistent with this part, with the administrator of the wage and hour division of the United States department of labor.

SECTION 8. Nothing in this part shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minimum under this part.

SECTION 9. Within existing resources of the department of labor and workforce development, the commissioner of labor and workforce development shall promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. For the purposes of promulgating rules and regulations, this act shall take effect on becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2010, the welfare requiring it.